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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,851	10/30/2003	Thomas Peterffy	30894-101	9758
26486 7590 06/25/2008 BURNS & LEVINSON, LLP 125 SUMMER STREET BOSTON, MA 02110			EXAMINER SHRESTHA, BLENDRA K	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 06/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,851

Applicant(s)

PETERFFY ET AL.

Examiner

BIJENDRA K. SHRESTHA

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claims 1-20 are presented for examination. Applicant filed an amendment on 03/03/2008 amending independent claims 1, 7, 10, 11, 17 and 20. After careful consideration of applicant's arguments and amendments, new grounds of rejections of claims necessitated by Applicant's amendment are established in the instant application as set forth in detail below. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madoff et al., U.S. Patent No. 7,162,448 (reference A in attached PTO-892) in view of Hauser et al., U.S. Patent No. 6,061,789 (reference B in attached PTO-892).

3. As per claim 1 and 7, Madoff et al. teach a processor conducting a secondary auction for electronic trading of financial instruments (see Fig. 1, Sever (21); column 3, lines 19-23; where system 10 is facilitate trading of bonds, options, futures which examiner notes occurs in secondary auction or trading) comprising:

(a) a receiver for information messages from market participants that bid for purchase or offer for sale of a financial instrument (see Fig. 1, Order Entry Side (12) and Order Response Side (14); column 3, lines 44-52), said receiver time-stamping received information messages (see Fig. 11, Time Stamp (132); column 1, lines 64-65)

(b) an electronic order book (see Fig. 1; column 4, lines 5-12; where order and response entry is stored in the sever memory which Examiner interprets as an electronic order book);

(c) an updater communicating with said receiver and said electronic order book for qualifying and parsing price, size and time-stamp bid or offer data from information messages received on said receiver and entering said parsed data on said electronic order book with priority tracked by instrument in price and time-stamp of a received and qualified message (see Fig. 2, Order (30); column5, lines 26-42);

(d) a transmitter communicating with said electronic order book for display to market participants data on price and quantity bid during said secondary auction entered on said electronic order book (see column 2, lines 61-67; Fig. 9A-9C, column 9, lines 61-67 to column 10, lines 1-32, ; column 7, lines 40-48; where market participant anonymous data on price and quantity data is transmitted to the auction system 20 for display);

(e) a price improvement period timer communicating with said updater

(i) initiated upon receipt by said receiver of an information message from a qualified market participant containing a bid or offer at or better than a preset price improvement over the best bid or offer prevailing across multiple markets

for a particular instrument (see Fig. 2; column 5, lines 53-67 to column 6, lines 1-3) and

(ii) terminated upon an elapsing of a preset price improvement period time less than a minute and commensurate with market risk (see column 6, lines 13-17); and

(f) a transaction executor communicating with said price improvement period timer and said electronic order book for allocating and executing upon said termination matches of bids or offers for said particular instrument, data for which are entered on said electronic order book, against market offers or bids in said order, subject to a partial time priority for said qualified market participant, and updating said electronic order book accordingly (see Fig. 2 to Fig. 8)).

Madoff et al. do not teach anonymity in displaying market participant data.

Hauser et al. teach anonymous bidding or auctioning in electronic commerce (Hauser et al., abstract).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include anonymity in displaying market participant data of Madoff et al. because Hauser et al. teach including above features would enable to protect privacy of bidder, consumer or merchant (Hauser et al., column 1, lines 57-62).

4. As per claim 2, Madoff et al. teach claim 1 as described above. Madoff et al further teach the processor wherein

said best bid or offer prevailing across multiple markets is the best bid or offer on a national market (see Fig. 1; Fig. 3, column 6, lines 49-66).

5. As per claim 3, Madoff et al. teach claim 2 as described above. Madoff et al further teach the processor wherein

said preset price improvement and increments in subsequent bids or offers during said price improvement are finer increments than those reported for best bids and offers on said national market (see Fig. 8).

6. As per claim 4, Madoff et al. teach claim 2 as described above. Madoff et al further teach the processor wherein

said preset price improvement period is three seconds (see column 4, lines 55-65).

7. As per claim 5 and 8, Madoff et al teach the processor wherein

said qualified market participant is a non-market-maker broker-dealer (see column 9, lines 47-48) and said qualified market participant receives time priority for forty percent by size of any remaining allocation at said qualified market participant's best price (see column 9, lines 26-46).

8. As per claim 6 and 9, Madoff et al teach the processor wherein

a market maker bidding or offering at the national best bid or offer at the commencement of said price improvement period receives time priority for one-third by size of any remaining allocation at said qualified market participant's best price after said qualified market participant's allocation at that or better price (see column 9, lines 25-46).

9. As per claim 10, Madoff et al. teach a computer program product for conducting a fast price improvement auction of financial instruments traded across national markets (see Fig. 1), said computer program product residing on a computer-readable medium comprising instructions for causing a computer to:

receive an order an order specifying the commencement of a price-improvement auction with better price than the prevailing price across national markets, commence and conduct an auction with a time duration of greater than zero and less than ten seconds where bids or offers are matched with contra market orders or bids, displayed to auction participants during price-improvement auction period, according to an allocation at the best price first and within each price level by time of receipt, with a share of any allocation at the best price level received from a market participant commencing said price-improvement auction reserved to said market participant (see Fig.2; column 5, lines 27-42, 53-62; column 7, lines 40-48; column 10, lines 20-30).

Madoff et al. do not teach anonymity in displaying market participant data.

Hauser et al. teach anonymous bidding or auctioning in electronic commerce (Hauser et al., abstract).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include anonymity in displaying market participant data of Madoff et al. because Hauser et al. teach including above features would enable to protect privacy of bidder, consumer or merchant (Hauser et al., column 1, lines 57-62).

10. As per claim 11 and 17, Madoff et al. teach a process for conducting a secondary auction electronic trading of financial instruments (see Fig. 1; column 3, lines 19-23; where system 10 is facilitate trading of bonds, options, futures which examiner notes occurs in secondary auction or trading) comprising the steps of:

(a) receiving an information message that bids for purchase of or offers for sale a financial instrument ; (b) entering on an electronic order book data parsed from said information message where said information message bids for purchase of or offers for sale a financial instrument at price at or better than a preset price improvement over the best national bid or offer, wherein price and quantity information are visible to market participants ; (c) initiating a price improvement period timer upon receipt of the first said bid or offer at or better than said preset price improvement (see Fig. 2; column 5, lines 26-34; column 10, lines 20-30);

(d) receiving and information messages and entering according to steps (a) and (b) until the elapsing of a preset price improvement period time (see Fig. 2; column 5, lines 43-59);

(e) allocating and executing, upon the said elapsing of said preset price improvement period time, matches of bids or offers for a particular equity option contract, data for which are entered on said electronic order book, in order of best bids or offers and earliest time of receipt at each price level, against market offers or bids, subject to a partial time priority for a qualified market participant from whom was received said information message initiating said price improvement period timer (see Fig. 2; column 5, lines 59-67 to column 6, lines 1-12).

11. As per claim 12, Madoff et al. teach claim 11 as described above. Claim 12 is rejected under same rational as claim 2 described above.
12. As per claim 13, Madoff et al. teach claim 12 as described above. Claim 13 is rejected under same rational as claim 3 described above.
13. As per claim 14, Madoff et al. teach claim 13 as described above. Claim 14 is rejected under same rational as claim 4 described above.
14. Claims 15 and 18 are rejected under same rational as claim 5 described above.
15. Claim 16 and 19 are rejected under same rational as claim 6 described above.
16. As per claim 20, Madoff et al. teach a method for conducting a fast price improvement auction of financial instruments traded across national markets (see Fig. 1, ECN, Internet) comprising the steps of:

receiving an order from a qualified market participant specifying the commencement of a price-improvement auction with better price than the prevailing price across national markets (see Fig. 2; column 5, lines 27-36)

commencing an auction with a time duration of greater than zero and less than ten seconds in which improved bids or offers are received, displayed to auction participants during price-improvement auction period (see Fig. 2; column 5, lines 32-42; column 7, lines 40-48; column 10, lines 25-30); and

at the termination of said auction, mating with contra market orders or bids according to an allocation at the best price first and within each price level by time of receipt, with a share of any allocation remaining at the best price level of said market

participant commencing said price-improvement auction reserved to said market participant (see Fig. 2; column 5, lines 53-67 to column 6, lines 1-12).

Madoff et al. do not teach anonymity in displaying market participant data.

Hauser et al. teach anonymous bidding or auctioning in electronic commerce (Hauser et al., abstract).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include anonymity in displaying market participant data of Madoff et al. because Hauser et al. teach including above features would enable to protect privacy of bidder, consumer or merchant (Hauser et al., column 1, lines 57-62).

Response to Arguments

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Madoff et al. teach networked auction system to facilitate trading of products such as bonds, options, and futures (see column 3, lines 19-23). Products such as bonds and derivatives are traded in secondary market after primary issues. For example, newly issued treasuries enter the secondary market after U.S. government pre-established auction and are traded typically "over-the-counter". The parties involved in the secondary trading are illustrated in Fig. 1 which includes ECNs, Broker/Dealers, Specialists, Option Makers etc.

With respect to the Applicant argument that the Madoff approach is directed to an offeror-specified time period rather than set by the exchange, the claim recitation specify time stamp associated with the communication. It is noted that the features upon which applicant relies are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Madoff et al. teach predefine relative indication which is based on two different parameters allows market participant to maintain trading interest anonymous as to price, size and identity. The Examiner disagrees with the Applicant argument that Madoff et al. do not display price and quantity of bids during the auction period. Madoff et al. teach transmitting order entry, response and matching them (see Fig. 9 and 10). The server process 100 receives order and exposes order (104) to the potential responder via electronic broadcast over the network system (see Fig. 10A, column 10, lines 34). The Examiner agrees that the market participant data is not displayed anonymously. This shortcoming is overcome by providing second reference by Hauser et al. for USC103 (a) rejection as described above.

Conclusion

18. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. Applicant is required under 37 CFR 1.111(c) to consider references fully when responding to this action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. The following are pertinent to current invention, though not relied upon:

Allen et al.(U.S. Pub No. 2002/0138401) teach method and system for automatic execution of a securities transaction.

Fraser et al. (U.S. Pub No. 2004/0210512) teach system and method for trading.

Gary (U.S. Patent No. 6,618,707) teaches automated exchange for trading derivative securities.

Hanley et al. (U.S. Pub No. 2003/0158806) teach automated raked bid sales method and system.

Keith (U.S. Pub No. 2001/0042040) teaches routing control for orders eligible for multiple markets.

Klein (U.S. Pub No. 2002/0194105) teaches process of and system for trading securities and option and markets related thereto.

Lutnick et al. (U.S. Patent No. 6,850,907) teach automated price improvement protocol processor.

Gamber et al. (U.S. Pub No. 2003/0177086) teach integrated order pre-matching system.

Madoff et al. (U.S. Patent No. 7,099,839) teach opening price process for trading system.

Rosenblatt et al. (U.S. Pub No. 2003/0120585) teach confidential electronic trading and matching system incorporating execution via an auction market.

Schmitz et al. (U.S. Pub No. 2003/0004858) teach automated execution system having participation.

Sweeting (U.S. Pub No. 2006/0229967) teaches system and method for providing price improvement in an active trading market

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijendra K. Shrestha whose telephone number is (571) 270-1374. The examiner can normally be reached on 7:00 AM-4:30 PM (Monday-Friday); 2nd Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art
Unit 3691

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